

# **TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

## **MINUTES OF BOARD MEETING**

**JULY 10, 2007**

President Bob Foster called the meeting to order at 10:04 A.M. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Bob Foster, President, Wendy Helling, Vice President, Dennis Hamilton, Steve Murphy and Ruthie Reynolds. Members absent were Ralph Buckner, Jr., and David Murphy.

Staff members present were Robert Gribble, Executive Director, Adrian Chick, Staff Attorney and Jimmy Gossett, Administrative Assistant.

### **APPROVAL OF MINUTES:**

A motion was made by Mr. Steve Murphy to approve the minutes of the June 5, 2007, Board Meeting.

Seconded by Ms. Helling

Adopted by voice vote

### **FORMAL HEARING:**

**Before the State of Tennessee Board of Funeral Directors and Embalmers  
In the Matter of:**

**Monica L. Auston and Auston-Victory Funeral Home**

**845 Marechalneil Street**

**Memphis, Tennessee 38114-2469**

**Docket No. 12.21-094985A**

**Presiding: Honorable Lynn M. England**

After Judge England addressed the Board, Defense Attorney Javier Bailey requested the proceedings be delayed until his clients arrived.

A motion was made by Mr. Steve Murphy for the proceedings to begin.

Seconded by Ms. Ruthie Reynolds

Adopted by voice vote

Following the presentation of the State and Defense cases and after closing arguments from both sides, Judge England instructed the Board of their responsibilities:

- 1) To consider if the allegations presented were factual
- 2) To determine what law was appropriate to support the allegations
- 3) What, if any, disciplinary action was to be taken
- 4) To adopt a policy as to why disciplinary action, if taken, was appropriate

As to the responsibility of Number 1, Mr. Steve Murphy made a motion to adopt allegations of fact of Numbers 1-7 in their entirety as contained in the Notice of Hearing and Charges. Numbers 8, 10-13 and 16-19 were rejected.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

As to the responsibility of Number 2, Mr. Dennis Hamilton made a motion to adopt all allegations of law, Numbers 1-11, as contained in the Notice of Hearing and Charges.

Seconded by Mr. Steve Murphy

Adopted by voice vote

As to the responsibility of Number 3, Mr. Steve Murphy made a motion to assess a \$500 civil penalty each for conclusion of law for Numbers 5-7 and to assess a \$250 civil penalty each for conclusion of law for Numbers 8-10. Also included in the motion, the establishment license of Auston-Victory Funeral Home is suspended until such time as the establishment appears before the Board and submits satisfactory proof that it has a licensed funeral director in charge.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

Member(s) noted as voting to the contrary of the voice vote conclusion:  
Ms. Wendy Helling

As to the responsibility of Number 4, Mr. Steve Murphy made a motion to adopt the following policy statement: "This decision is being made for the health, welfare and benefit of the citizens of the State of Tennessee."

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

Mr. Steve Murphy made a motion that full court costs be assessed to the defendants and specified that the costs shall be paid within six (6) months of the hearing date.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

**APPROVAL OF ESTABLISHMENT LICENSES:**

Upon motion, based upon the application records, the following establishments were approved for licensure.

**Change of Ownership  
Sellars Funeral Home at Mt. Juliet  
Mount Juliet, TN**

**New Ownership: Corporation**

**New Establishment  
Minority Mortuary  
Memphis, TN**

**Ownership: Sole Proprietorship**

**LEGAL REPORT:  
ADRIAN CHICK, STAFF ATTORNEY**

**1. Case No.: L07-FUN-RBS-2007054461**

An inspection on February 14, 2007 revealed the following violations:

- Two casketed bodies lacked permanent identification devices.
- The establishment does not have the latest inspection report and license for the crematory they use.
- The high end range for caskets on the GPL does not match the high end range on the CPL.
- The CPL lacks provision for alternative containers.
- Two caskets offered for sale are inconsistent with the CPL.

No response has been received after two requests. The first request was sent by certified mail and was returned unclaimed. The request was sent again on April 17, 2007 with no response.

Complaint History: 200600113 – Closed

**Recommendation: Consent Order assessing civil penalty of \$500 and authorization for a hearing.**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Wendy Helling

Adopted by voice vote

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**2. Case No.: L07-FUN-RBS-2007054501**

An inspection on February 14, 2007 revealed the following violations:

- The manager's current funeral director license certificate was not available for inspection. A copy must be obtained from the board for each location.
- The manager's current embalmer license was not available for inspection. A copy must be obtained from the board for each location.
- A casketed body lacked a permanent identification device.

The respondent states that the manager's licenses had been inspected earlier that day at a previous location and notes that the \$60 fee for copies of licenses is "very expensive". The respondent states that the remains were "tagged", but does not specifically state that a tag with the required information was attached.

Complaint History: 200502506 – Closed

**Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

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**3. Case No.: L07-FUN-RBS-2007049811**

The respondent advertised an establishment location that has not been licensed as an establishment. Tennessee Code Annotated § 62-5-303 prohibits operation, or an offer to operate, a funeral establishment that has not been licensed by the Board.

The respondent states that it was in the process of purchasing the location in question and ordered the ad in the yellow pages prior to closing on the purchase so that it would not miss the deadline for the ad. After the deal fell through, the respondent attempted to stop the ad but was told it was too late.

Complaint History: 200602750 and 200603486 – Both Closed.

**Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Wendy Helling

Adopted by voice vote

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**4. Case No.: L07-FUN-RBS-2007056011**

An inspection on March 22, 2007 revealed the following violations:

- Cremation authorization form lacks the signature of the funeral director.
- Latest inspection report and license not available for the crematory used.
- Change of ownership occurred without notice to the Board.
- GPL lacks two of sixteen requirement items and lacks all six required disclosures.
- Reason for embalming not specified on SFGS.

Respondent submitted revised GPL and CPL.

Complaint History: 200600691 – Closed.

**Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing. (Note: This establishment was cited one year earlier for similar FTC violations.)**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

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**5. Case No.: L07-FUN-RBS-2007053941**

Respondent was reinspected on April 3, 2006 and sent a notice on April 11, 2006, that a fee of \$200 was due to the Board. The respondent was reinspected again on May 8, 2006, and sent a notice on May 19, 2006, that another fee of \$200 was due. Respondent was sent a second notice on October 20, 2006, that both fees were due (total \$400). Respondent was sent a third notice on February 5, 2007, that both reinspection fees were past due. This transmittal included notice that a complaint would be opened if the fees were not received by February 15, 2007. On March 16, 2007, a complaint was opened and forwarded to the respondent. The reinspection fees of \$400 were finally paid on March 26, 2007.

Response: As stated above.

Complaint History: Numerous.

**Recommendation: Consent Order assessing civil penalty of \$500 (\$250 x 2) for failure to pay reinspection fees in a timely manner.**

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

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**6. Case No.: L07-FUN-RBS-2007060541**

An inspection on April 17, 2007 revealed the following violations:

- The expired license of a former funeral director/embalmer is displayed on the wall, and the establishment states that he still claims to be a funeral director but is no longer an employee. This individual was present at the time of inspection.
- SFGS does not contain itemizations required.
- Casket listed for immediate burial does not match CPL.
- Direct Cremation prices don't match CPL.
- SFGS lists an address no longer in business.

Revised CPL, GPL, and SFGS were submitted.

Complaint History: 200504184 – Closed.

Comments: The expired license of the individual is still posted on the wall, the establishment is aware the individual holds himself out as a licensed individual, and yet the establishment allows his presence. These facts support a finding that the establishment is aiding or abetting unlicensed conduct.

**Recommendation: Consent Order assessing \$500 civil penalty for aiding and abetting the unlicensed practice of funeral directing and/or embalming, plus \$250 for FTC violations (Total \$750).**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

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**7. Case No.: L07-FUN-RBS-2007054391**

An inspection on February 12, 2007 revealed the following violations:

- The current funeral director license certificates of three funeral directors were not available at time of inspection.
- The current embalmer license certificates of two embalmers were not available at time of inspection.
- Four caskets in the selection room and one on the outer burial container price list were inconsistent with the CPL.
- The establishment underwent a change in ownership but failed to notify the Board.

The current license certificates were on the premises but had mistakenly been put in the wrong file. The respondent states it was unaware of the need to submit an application for change of ownership, but it submitted the fee for change of ownership with its response. Updated price lists were submitted.

Complaint History: 200600643 – Closed.

**Recommendation: Consent Order assessing civil penalty of \$500 and authorization for a hearing.**

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

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**8. Case No.: L07-FUN-RBS-2007056051**

An inspection on March 22, 2007 revealed the following violations:

- The respondent sent notice to local funeral establishments that it was opening a business for trade embalming. This business does not have an establishment license.

The respondent states that the business was formed after a certain establishment indicated it may be necessary for accounting purposes. After this complaint was filed, the respondent states it has ceased doing business and mailed out notices to this effect.

Complaint History: None.

**Recommendation: Letter of Warning**

A motion was made by Ms. Wendy Helling to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

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**9. Case No.: L07-FUN-RBS-2007056041**

The facts are the same as case Number 8 above, except this complaint is against the second partner in the trade embalming business.

**Recommendation: Letter of Warning**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Wendy Helling

Adopted by voice vote

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**10. Case No.: L07-FUN-RBS-2007056031**

The facts are the same as case Numbers 8 and 9, except this complaint is against the trade embalming business.

**Recommendation: Letter of Warning**

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Wendy Helling

Adopted by voice vote

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**11. Case Nos.: L07-FUN-RBS-2007047861, L07-FUN-RBS-2007047881,  
L07-FUN-RBS-2007047841, L07-FUN-RBS-2007047851**

These complaints were opened against both the establishment and the funeral director. The basis of these complaints is the Respondents' use of language in its letterhead and other documents reflecting a name that is not exactly the same as the registered name. In addition to its registered name, the Respondent added in smaller font above its registered name that it is "A XXXX funeral chapel". This language was changed at the request of a field representative, but the respondent later added back the language. The Board requested an informal conference on April 10, 2007. Based upon an agreement with the respondent to

change the references in respondent's logos, legal recommends this matter be closed, and that the respondent be given ninety (90) days to complete changes.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Ms. Wendy Helling

Adopted by voice vote

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**ADMINISTRATIVE MATTERS:  
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR**

**Report of Licenses Issued June 5, 2007 – July 9, 2007 by Executive Director  
as per Board's Authority:**

**Establishments**

High Point Funeral Chapel 3788 Summer Avenue Memphis, TN	Change of Name
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Smith Funeral & Cremation Service 1402 Tuckaleechee Pike Maryville, TN	Change of Name
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**Individuals**

Thomas David Bucher Smyrna, TN	Funeral Director & Embalmer
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Brad William Kuchnicki Knoxville, TN	Funeral Director & Embalmer Reciprocity – Michigan
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Gary M. York Red Boiling Springs, TN	Funeral Director & Embalmer Reciprocity – Kentucky
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Dawn Renee' Everett Cordova, TN	Embalmer Reciprocity - Florida
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Scott L. Teague Mountain City, TN	Funeral Director
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Peter Showers, Jr. Memphis, TN	Funeral Director
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**Closed Establishment Report:**

One establishment has closed since the last board meeting:

- **Blakemore Funeral Home, 824 Lipscomb St., Shelbyville, TN 37160**

**Disciplinary Action Report:**

**The Board has previously authorized these consent orders and civil penalties. The Consent Orders have been signed and the civil penalties paid by the respondents. The Executive Director requests the Board's acceptance of the following consent orders.**

Complaint No. 2007061441

Violation: Unreasonably refusing to promptly surrender the custody of a dead human body and unprofessional conduct for referencing a colleague in an extremely disparaging and offensive racial manner

Action: \$750 Civil Penalty

Complaint No. 2006046191

Violation: Aiding and abetting an unlicensed individual to practice in the funeral profession

Action: \$500 Civil Penalty

Complaint No. 2007054261

Violation: Failure to affix a permanent identification device to deceased human remains

Action: \$250 Civil Penalty

Complaint No. 2007058811

Violation: Manager of establishment forged the Medical Examiner's signature on a certificate of death

Action: \$500 Civil Penalty

Complaint No. 2006046201

Violation: Continuing the practice of funeral directing while license was in a suspended status due to previous disciplinary action by the board

Action: Revocation of license

Complaint No. 2007056021

Violation: FTC price violations and failure to maintain a copy of current license and latest inspection report for the crematory that the funeral home uses

Action: \$250 Civil Penalty

Complaint No. 2007054401

Violation: FTC price violations and some statements of funeral goods and services listed an incorrect establishment name  
Action: \$250 Civil Penalty

Complaint No. 2007056341

Violation: Cremation authorizations failed to contain statutorily required written disclosures and failure to maintain a copy of current license and latest inspection report for the crematory that the funeral home uses  
Action: \$250 Civil Penalty

A motion was made by Mr. Steve Murphy to approve the Executive Director's request for the Board's acceptance of the above consent orders.

Seconded by Ms. Ruthie Reynolds

Adopted by voice vote

**Open Complaint Report:**

As of July 6, 2007, there were 87 open complaints.

**LEGISLATIVE SUGGESTIONS:**

Mr. Gribble requested for any board member to notify the Office of legislative concerns or suggestions no later than 12 Noon on Monday, July 16, 2007.

**ADJOURN:**

A motion was made by Ms. Wendy Hellum to adjourn.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

There being no further business, the meeting was adjourned at 5:52 P.M.

Respectfully submitted,

*Robert B. Gribble*

Robert B. Gribble, CFSP  
Executive Director